SUPREME COURT OF THE UNITED STATES.

No. 267.

THE UNITED STATES EX. REL. P. S. BENBOW, PLAINTIFF IN ERROR,

vs.

THE MAYOR AND ALDERMEN OF IOWA CITY, IOWA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

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1 The United States of America to the mayor and aldermen of Iowa City:

You are hereby cited and admonished to appear before the Supreme Court of the United States, to be held at Washington, in the District of Columbia, on the first Monday in December, 1866, to answer to a writ of error from the Supreme Court of the United States to the circuit court of the United States from the district *the district* of Iowa, in a certain cause, therein pending, wherein the United States, on the relation of P. S. Benbow, is plaintiff in error, and you are a defendant in error.

Witness the Hon. S. F. Miller, judge of the Supreme Court of the United States, this 11 of May, A. D. 1866.

(Signed) SAM. F. MILLER, *Judge.*

Service of this citation is admitted this 15 of May, 1866.

J. Y. BLACKWELL,
Attorney for Defendants in Error.

2

3 Circuit court of the United States—District of Iowa. May Term A. D. 1866.

THE UNITED STATES *ex. rel.* P. S. Benbow
v.
THE MAYOR AND ALDERMEN of the city of Iowa City. } No. 280.

I hereby certify that a copy of the writ of error and of the citation in the above cause were filed in my office within ten days after the rendition of the judgment therein, to wit, on the 12th day of June, A. D. 1866.

[SEAL.] W. G. WOODWARD,
Clerk of said Court, with the seal thereof affixed.

4 The United States of America to the circuit court of the United States for the district of Iowa.

Whereas, in the record and proceedings of a certain cause pending in our said circuit court, wherein the United States, on the relation of P. S. Benbow, is plaintiff, and the mayor and aldermen of Iowa City are defendants, in which judgment was rendered on the 11 day of May, 1866, in favor of said defendants, there is manifest error, as it is said.

Now, we being willing to do justice to the plaintiff in that behalf, do command you that you do forthwith certify the record of said cause to our Supreme Court of the United States, to be held at Washington, in the District of Columbia, on the first Monday in December, 1866, so that said errors may be corrected and justice done to the parties in that behalf.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme

Court of the United States, and the seal of said circuit court for the district of Iowa, this 11th of June, 1866.

Attest:

[SEAL.] W. G. WOODWARD,
Clerk of Circuit Court of the United States for Iowa.

5 OFFICE OF THE CLERK OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

In obedience to the within writ of error, I hereto annex a transcript of the record and proceedings of the said circuit court in the cause therein named.

[SEAL.] W. G. WOODWARD,
Clerk of said Court, with the seal thereof affixed.

6 Supreme Court of the United States.

THE UNITED STATES on the relation of P. S. Benbow, plaintiff in error, *v.* THE MAYOR AND ALDERMEN of Iowa City, defendants in error. } Error to the circuit court for the district of Iowa.

Now comes the plaintiff in error, by Grant, his attorney, and says that on the record of the court there is manifest error, as follows:

1. The court erred in overruling the demurrer to the return of the defendants to the alternative writ of mandamus.

2. The said demurrer ought to have been sustained, because the return was not sworn to by any of the defendants named in the writ, and was not under the seal of the corporation.

3. The return is not a complete answer to the writ. The mandate is to levy a tax, collect and pay a judgment, and the return is simply the levy of a tax.

4. The return is not responsive to the writ, in this: the mandate was to levy a specific tax to pay plaintiff's judgment. The return is that the defendants have levied a tax to pay the plaintiff's and
7 other claims; and said claims are not *are not* disclosed, so as to enable the court to determine their right to divide the fund.

5. The return is general; it should be special, and disclose the whole acts constituting the levy; it does not disclose the amount in which the levy was made or the year in which it was made.

6. The return does not show the amount of the levy or mode of the levy, so as to enable the court to determine whether it is sufficient to pay the plaintiff's judgment and other claims. But the defendants assume the place of the court, and say it is sufficient.

7. The return is general, uncertain, and insufficient.

And for these errors the plaintiff prays judgment of the court below that it may be reversed.

GRANT, *for Plaintiff in Error.*

8 Proceedings before the circuit court of the United States in and for the district of Iowa, at a term thereof begun and holden at Des Moines, on the second Tuesday of May, A. D. 1866.

Be it remembered, that on the 21st day of April, A. D. 1865, there was filed in the office of the clerk of the circuit court aforesaid a petition of the tenor following, that is to say:

9 *Relation.*

In the circuit court of the United States for the district of Iowa.

THE UNITED STATES OF AMERICA on the relation of P. S. Benbow
v.
THE MAYOR AND ALDERMEN of the City of Iowa City.
} Affidavit for mandamus.

Now comes P. S. Benbow, and gives this court to be informed that he is a citizen of the State of Indiana, and that the mayor and aldermen of Iowa City, are citizens of the State of Iowa.

That on the first day of March, A. D. 1856, the municipal corporation of Iowa city, existing by the laws, and as citizens of the State of Iowa, did issue the bonds of said city to the amount of fifty thousand dollars, in sums of five hundred dollars each, bearing interest at the rate of ten per cent. per annum, payable, the principal on the first day of January, 1876, and the interest yearly on the first day of January in each year. Said bonds were payable to John A. Dix, or bearer, and were issued and delivered to the holders thereof in pursuance of a vote of the lawful electors of the said Iowa city, at an election held on the 12th day of March, 1855, in accordance with an ordi-

10 nance of said city authorizing the same for the purpose of borrowing money to pay the subscriptions of said city, to the capital stock of the Mississippi and Missouri railroad company.

That the said ordinance, which was adopted by a majority of the legal voters of said city, did, by the 6th section thereof, provide, that for the first ten years after the issuance of said bonds, the city council of said city should annually levy a tax upon all the taxable property within said city, which, together with the dividends that might be received upon the stock, should in the aggregate be sufficient to pay the interest accruing annually on the said bonds.

A copy of one of said bonds and the coupon or interest note is hereto annexed.

That it was the duty of the mayor and aldermen of said city, who composed the city council, annually to levy the tax named in said ordinance, but since the year 1860 this duty has been neglected and the said railroad company has never declared a dividend. That by reason of such neglect the payment of the yearly interest on said bond since that date, has been neglected. That the relator is the holder of said bonds numbered 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, and 92.

That by reason of the neglect of the said corporation to pay said

interest, the relator commenced a suit in this court against the
11 corporation of Iowa City, and such proceedings were had that on the 20th of October, A. D. 1864, the relator recovered judgment on the coupons or interest notes of his said bonds for the sum of $2,276 90, with interest and costs; and execution was issued on said judgment, which has been returned "no property found."

And the relator shows that it was the duty of the mayor and aldermen of said city to levy a specific tax on the property of said city sufficient to pay the said interest named in said judgment, and interest and cost; and though a demand has been made upon them for that purpose, they have neglected so to do.

Your relator has no other adequate remedy at law, and he prays of this court that a writ of mandamus may issue from the same, directing them forthwith to levy a specific tax upon the taxable property of said city, for the year 1865, sufficient to pay said judgment, interest, and cost, and to collect the same and pay the same, and he prays that said writ may be made peremptory in the first instance.

P. S. BENBOW.
By J. GRANT, *Attorney.*

Affidavit.

STATE OF IOWA, *Scott County:*

12 I, James Grant, declare on oath, that I was the plaintiff's attorney who recovered the judgment named in the foregoing paper, that I have seen the bonds referred to and the records of Iowa City; and I believe the facts stated in the paper to be true.

JAMES GRANT.

Sworn to and subscribed, by James Grant, before me this 12th of April, 1865.

Given under my hand and seal notarial, the above date.

[SEAL.] S. F. SMITH,
Notary Public, Scott Co., Iowa.

Copy of bond.

No. 83.—Copy of Iowa city bond. $500 00.

Bond of the city of Iowa City, United States of America, State of Iowa.

Be it known, that the city of Iowa City owes to John A. Dix, or bearer, the sum of five hundred dollars, for money borrowed to pay the subscription of said city to the capital stock of the Mississippi and Missouri railroad company, the receipt whereof is hereby acknowledged, and which sum the said Iowa City promises to pay at the office of E.
W. Clark, Dodge & Co., in the city of New York, on the first
13 day of January, eighteen hundred and seventy-six, with interest on said sum of five hundred dollars, at the rate of ten per cent. per annum, payable annually on the first day of January, in each year; and the faith of the said Iowa City is hereby pledged for

the annual payment of the interest, and the ultimate redemption of the principal.

And I, G. D. Woodin, mayor of said Iowa City, do hereby certify that by a vote of the legal electors of the said city, at an election held on the 12th day of March, 1855, in accordance with an ordinance of the city council of Iowa City, sanctioning the same, that the said city was authorized to issue city bonds to the amount of fifty thousand dollars, for the purpose aforesaid, bearing interest at ten per cent. per annum; and that the above is one of the bonds issued for said purpose, and is entitled to the benefits arising from the sinking fund created by said ordinance to provide for the payment of principal and interest of said bonds.

In testimony whereof the said city has caused the corporate seal thereof to be hereto affixed to this bond, and the same to be signed by the mayor and attested by the recorder, this first day of March, 1856.

(Signed) G. D. WOODIN, *Mayor.* [L. S.]

Attest: J. G. SPERRY, *Recorder.*

14 *Copy of coupon.*

Copy of coupons or interest warrants.

The city of Iowa City will pay the bearer fifty dollars, at the office of E. W. Clark, Dodge & Co., in the city of New York, on the 1st day of January, 1861, being one year's interest on bond No. 83. $50.

G. D. WOODIN, *Mayor.*

Demand.

Copy of demand to levy tax.

DAVENPORT, IOWA, *April* 12, 1865.

To the mayor and aldermen of Iowa City, Iowa:

GENTLEMEN: On the 14th of Feb'y, 1855, your city council passed an ordinance to issue certain bonds to pay for stock in the Mississippi and Missouri Railroad Company, and by the sixth section of the same, provided that for the first ten years after the issuing of said bonds, the city council should levy annually a tax upon all the taxable property within the city, which together with the dividends that might be received on said stock, should in the aggregate be sufficient to pay the interest on said bonds. This duty you have neglected to do. On the 20th of October, 1864, I recovered in the circuit court of the United States, a judgment against the city of Iowa City for the sum of $2,275 with interest and cost, which was for the unpaid in-
15 terest on said bonds. I demand of you that you forthwith levy a specific tax to pay said judgment, interest, and cost.

P. S. BENBOW.
By GRANT & SMITH,
His Attorneys.

Indorsed: Filed April 21, '65.

W. G. WOODWARDS
Clerk C. C. U. S.

Order for alternative writ.

And afterwards, to wit, on the 13th day of May, A. D. 1865, it then being of the May term of the said circuit court in the year 1865, the following further proceedings were had in the same cause to wit:

THE UNITED STATES on the relation P. S. Benbow
v.
THE MAYOR AND ALDERMEN of Iowa City. } No. 280.

This cause now coming on for hearing, the parties appear by their counsel, and the information of the relator being heard, and all things touching the same being seen and understood, the prayer thereof is granted.

Whereupon it is considered by the court that an alternative
16 writ of mandamus be issued to the said mayor and aldermen of Iowa City, in accordance with the prayer of the information, returnable to the next term of this court.

Alternative writ.

And afterward, on the 19th day of October, A. D. 1865, an alternative writ of mandamus was issued in the words and figures following, viz:

The United States of America, to the mayor and aldermen of Iowa City in the State of Iowa.

Whereas one P. S. Benbow has filed in our circuit court of the United States for the district of Iowa his information, wherein it is alleged that said P. S. Benbow is a citizen of the State of Indiana, and that the mayor and aldermen of Iowa City, citizens of the State of Iowa; and that, on the first of March, 1856, the municipal corporation of Iowa City, existing by the laws, and a citizen of the State of Iowa, issued the bonds of said city to the amount of fifty thousand dollars, in sums of five hundred dollars each, bearing interest at the rate of ten per cent. per annum, payable, the principal on the first day of January, 1876, and the interest yearly on
17 the first day of January in each year. Said bonds were payable to John A. Dix, or bearer, and were issued and delivered to the holder thereof, in pursuance of a vote of the lawful electors of the said Iowa City, at an election held on the 12th day of March, 1855, in accordance with an ordinance of said city authorizing the same for the purpose of borrowing money to pay the subscription of said city to the capital stock of the Mississippi and Missouri Railroad Company.

That the said ordinance, which was adopted by a majority of the legal voters of said city, did, by the sixth section thereof, provide that for the first ten years of the issuance of said bonds, the city council of said city should annually levy a tax upon all the taxable property within said city, which, together with the dividends that

might be received upon the stocks, should in the aggregate be sufficient to pay the interest accruing annually on the said bonds.

And that it was the duty of the mayor and aldermen of said city, who compose the city councils, annually to levy the tax named in said ordinance, but since the year 1860 this duty has been neglected, and the said railroad has never declared a dividend. That by rea-
18 son of such neglect the payment of the yearly interest on said bonds since that date has been neglected. That the relator is the holder of said bonds numbered 83, 84, 85, 86, 87, 88, 89, 90, 91, and 92. That by reason of the neglect of the said corporation to pay said interest, the relator commenced a suit in this court against the corporation of Iowa City, and such proceedings were had that on the 20th day of October, 1864, the relator recovered judgment on the coupons or interest notes of his said bonds, for the sum $2,276 90, with interest and cost, and execution was issued on said judgment, which has been returned, "no property found."

And the relator shows that it was the duty of the mayor and aldermen of said city to levy a specific tax on the property of said city sufficient to pay the said interest named in said judgment and interest and costs, and though a demand has been made upon them for that purpose, they have neglected so to do.

And that the relator has no other adequate remedy at law, and he prays this court that a writ of mandamus may issue from the same, directing them forthwith to levy a special tax upon the taxable property of said city for the year 1865 sufficient to pay said judgment, and to collect the said tax and pay the said judgment.

19 Now these are to command you, the mayor and aldermen of Iowa City, that you do forthwith levy a specific tax upon the taxable property of said city, for the year 1865, sufficient to pay the said judgment of $2,276 90 rendered on the 20th of October, 1864, interest and cost, and collect the said tax and pay the same, or that you show cause to the contrary to our said circuit court on the first day of the next term thereof to be held at Des Moines, on the second Tuesday in May, 1866; and have you then and there this writ with an account of your doings therein at our said court at said time.

Witness the Hon. S. P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, on this, the 19th day of October, A. D. 1865.

[SEAL.] W. G. WOODWARD, *Clerk.*

Indorsed: Filed May 9, 1866.

W. G. WOODWARD, *Clerk.*

Return to writ.

And afterward, on the 9th day of May, A. D. 1866, the said writ was returned and filed, and the following return therewith, viz:

THE UNITED STATES ex. rel. P. S. Benbow
v.
THE MAYOR AND ALDERMEN of Iowa City.

20 In the circuit court U. S. for the district of Iowa.

Now come the respondents, the mayor and aldermen of Iowa City,

and for answer or return to the alternative writ of mandamus heretofore ordered in this case, they state that, in obedience to the order of this court they did, on the 15th day of October, 1865, proceed to levy a tax of one per cent. upon the taxable property of the said city, for the purpose of paying the judgment named in the information and other claims, and duly certified said levy to the proper officer for collection.

They say that the said tax of one per cent. is sufficient in amount to pay the said judgment and the other claims for the payment of which it was levied.

And having fully complied with the order of the court, respondents ask to be dismissed with costs.

RANKIN & McCRARY and
J. Y. BLACKWELL,
Att'ys for Respondents.

Affidavit.

J. Y. Blackwell being duly sworn on his oath says, he is attorney and agent for the respondents, and that he is an officer of said city, to wit, city solicitor, and that the foregoing answer or return is true, as he verily believes. He further says, he has knowledge of the facts and is authorized to make this return and affidavit.

J. Y. BLACKWELL.

21 Sworn and subscribed before me this 9th May, 1866.

W. G. WOODWARD,
Clerk C. C. U. S.

Demurrer.

And on the same 9th day of May, 1866, the following demurrer to the aforesaid return or answer, was filed, viz :

THE UNITED STATES ex. rel. P. S. Benbow
v.
THE MAYOR AND ALDERMEN of Iowa City. } Mandamus.

Now comes the relator and demurs to the return to the said alternative writ, for the following causes :

1st. The said return is not sworn to by any of the persons to whom it is directed, and it has no seal of the corporation annexed.

2d. The said return is not a complete answer to the writ; the mandamus is to levy a tax, collect and pay the plaintiff's judgment, and the return is simply that they have levied a tax.

22 3d. The return is not responsive to the writ, in this: that the mandate was to levy a specific tax to pay plaintiff's judgment. The return is, that the defendants have levied a tax to pay the plaintiff's and other claims, and said claims are not disclosed so as to enable the court to determine their right to divide the fund.

4th. The return is general. It should be special, and disclose the whole acts constituting the levy. It does not disclose the amount on which the levy was made, nor the year in which it was made.

5th. The return does not show the amount of the levy nor mode of levy, so as to enable the court to determine whether it is sufficient to pay the plaintiff's judgment and other claims, but the defendants assume the place of the court and say it is sufficient.

6th. The return is general, uncertain, and insufficient; wherefore he prays judgment, &c.

GRANT, *for Plaintiff.*

23 *Judgment.*

And afterwards, on the 12th day of May, 1866, it being of the May term of the said circuit court, the following proceeding was had and the following entry made in the above-named cause, viz:

THE UNITED STATES on the relation of P. S. Benbow, *v.* THE MAYOR AND ALDERMEN OF Iowa City. } Mandamus.

This cause now came on to be heard, Grant for the plaintiff and Blackwell and McCrary for the defendants, and the defendants at this term filed a return to the alternative writ in this cause, and the plaintiff filed a demurrer to said return, and on argument had it is ordered and adjudged by the court that the said demurrer be overruled and the said return be held a sufficient return to the said writ; and the plaintiff thereupon elects to abide by his demurrer, and it is adjudged that the suit be dismissed and the defendant recover his cost of the plaintiff, and have execution therefor; and the plaintiff prays a writ of error to the Supreme Court, which is allowed
24 upon the plaintiff filing a bond in the penal sum of one hundred dollars, with Charles Whitaker as surety.

Copy of bond.

And on the same 12th day of May, A. D. 1866, a bond of the tenor following was filed, viz:

Know all men by these presents, that we, P. S. Benbow, principal, and Charles Whitaker as surety, are held and firmly bound unto the mayor and aldermen of Iowa City, in the penal sum of one hundred dollars, to which payment we bind ourselves and each of us.

Given under our hand this 12th day of May, A. D. 1866.

The condition of this obligation is this: Whereas P. S. Benbow has taken a writ of error to the Supreme Court of the United States, from the decision of the circuit court of the United States for the district of Iowa, in a certain cause pending in the said circuit court, wherein the United States, on the relation of P. S. Benbow, was plaintiff, and the mayor and alderman of Iowa City are defendants; now, if the said Benbow shall duly prosecute his writ of error with effect, and

answer all damages and costs if he fail to make good his plea, this obligation shall be void; otherwise to remain in full force.

25 P. S. BENBOW.
By GRANT, *his Att'y.*
C. WHITAKER.

Which bond is indorsed: Approved by the court, and filed May 12th, 1866.

W. G. WOODWARD, *Clerk.*

26 UNITED STATES OF AMERICA, *District of Iowa:*

I, W. G. Woodward, clerk of the circuit court of the United States for the district of Iowa, hereby certify that the foregoing nine sheets of paper contain a full and true transcript of the pleadings, papers, and proceedings of the court, in the cause of the United States, on relation of P. S. Benbow *vs.* the mayor and aldermen of Iowa City.

In testimony whereof I have hereto set my hand and affixed the seal of the said circuit court, at Des Moines, this 9th day of June, 1866.

[SEAL.] W. G. WOODWARD, *Clerk.*

{Revenue stamp, 5 cts., cancelled.}

Clerk's fees:

Transcript	$4 40
Certif. and seal	35
	4 75

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Supreme Court of the United States.

The United States on the relation of P. S. Benbow,	Plaintiff in Error.
vs.	
The Mayor and Aldermen of Iowa City.	Defendants in Error.

Writ of Error from the Circuit Court of the District of Iowa.

ARGUMENT FOR PLAINTIFF IN ERROR.

CASE.

P. S. Benbow, a citizen of Indiana, filed his information in the Court below, setting forth that on the 1st of March, 1856, the corporation of Iowa city, a citizen of Iowa, issued $50,000 of its bonds, bearing ten per cent. interest, in pursuance of a vote of the electors, to pay a subscription of said city to the stock of the Mississippi and Missouri Railroad Company; that, by the ordinance authorizing said vote, a tax, sufficient with the diyidends on the road, was to be levied to pay said interest accruing annually on said bonds; a copy of the section of said ordinance authorizing this levy is set out in the record; that it was the duty of the Mayor and

Aldermen, who compose the Common Council to levy this tax, but they have neglected to do so since 1860, and that the Railroad Company has paid no dividends, and by reason of such neglect the interest on said bonds has been left unpaid; that the plaintiff is the holder of bonds 83; 4, 6, 7, 8, 9, 90—1 and 2.

That on the 20th of October, 1864, the plaintiff in the said Circuit Court recovered judgment on the coupons of his bonds, for $2,276.90, with interest and costs; that execution has issued, and been returned *nulla bona*. That it was the duty of the Mayor and Aldermen to levy a specific tax to pay said judgment, and although a demand has been made, they have neglected so to do; that the relator has no other adequate remedy at law, and he prays for a writ of mandament to compel said Mayor and Aldermen to levy and collect such a tax and pay said judgment; copies of the bonds and coupons and demand are annexed to information.

An alternative writ was issued, and the defendant returned; that in obedience to said writ, the said Mayor and Aldermen, on the 15th of October, 1865, had levied a tax of one per cent. on the taxable property of the city to pay said judgment and other claims, and duly certified said levy to the proper officer for collection; that said tax of one per cent. was sufficient to pay said judgment and other claims, for the payment of which it was levied. The relator demurred to this return as totally insufficient.

1. It was not sworn to, and had not the seal of the corporation annexed.

2. It was not a complete return to the writ; the mandate was to levy, collect, and pay the judgment.

3. The return was not responsive to the writ in this: the mandate was to levy a specific tax to pay the plaintiff's judgment; the return is that the tax was levied to pay plaintiff's and other claims, and said claims are not disclosed so as to enable the Court to determine their right to divide the fund.

4. The return is general; it should be special, and disclose the whole act constituting the levy. It does not disclose the amount on which the levy was made, nor the year in which it was made.

5. The return shows neither amount nor mode of levy, so as to enable the Court to determine whether it is sufficient to pay the plaintiff's and other claims, but the defendants assume the place of the Court, and say it is sufficient.

6. The return is general, uncertain, and insufficient.

The Court below overruled the demurrer, the plaintiff abided by it, the petition was dismissed, and this writ of error is brought.

The plaintiff assigns for error in this Court the overruling of the demurrer, which ought to have been sustained for the various causes assigned above.

ARGUMENT.

Leaving out of consideration the formal objections to the return, that it is not sealed, signed, nor sworn to, it purports to obey the writ, and undertakes to say wherein it has obeyed it. The demurrer shows, as the strongest argument we can make, that the writ commanded a specific levy of a tax sufficient to pay this judgment, to collect said tax, and to pay said judgment.

The return is, that the defendants "have levied a tax, not a specific tax, of one per cent.," without saying on what amount of valuation, "sufficient to pay this judgment and other claims." It does not state the amount or nature of such other claims, whether judgment or simple contract, whether for interest or other similar bonds, or for debts not entitled to this levy under the ordinance which authorized this debt. The mandate ordered a levy and collection of the tax; the return, made six months after the date of the levy, does not aver a collection of the tax, but that the levy has been delivered to the proper officer to collect. Who is he? The mandate is to collect and pay; the return is silent on these two clauses of the writ. It is no return.

GRANT, *for Plaintiff in Error*